

No. 15532

United States
Court of Appeals
for the Ninth Circuit

ARTHUR L. LAWRENCE AND ALMA P. LAW-
RENCE,

Petitioners,

VS.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record

Petition to Review a Decision of the Tax Court
of the United States

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JUN 17 1957

PAUL P. O'BRIEN, CLERK

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United States
Court of Appeals
for the Ninth Circuit

ARTHUR L. LAWRENCE AND ALMA P. LAW-
RENCE,

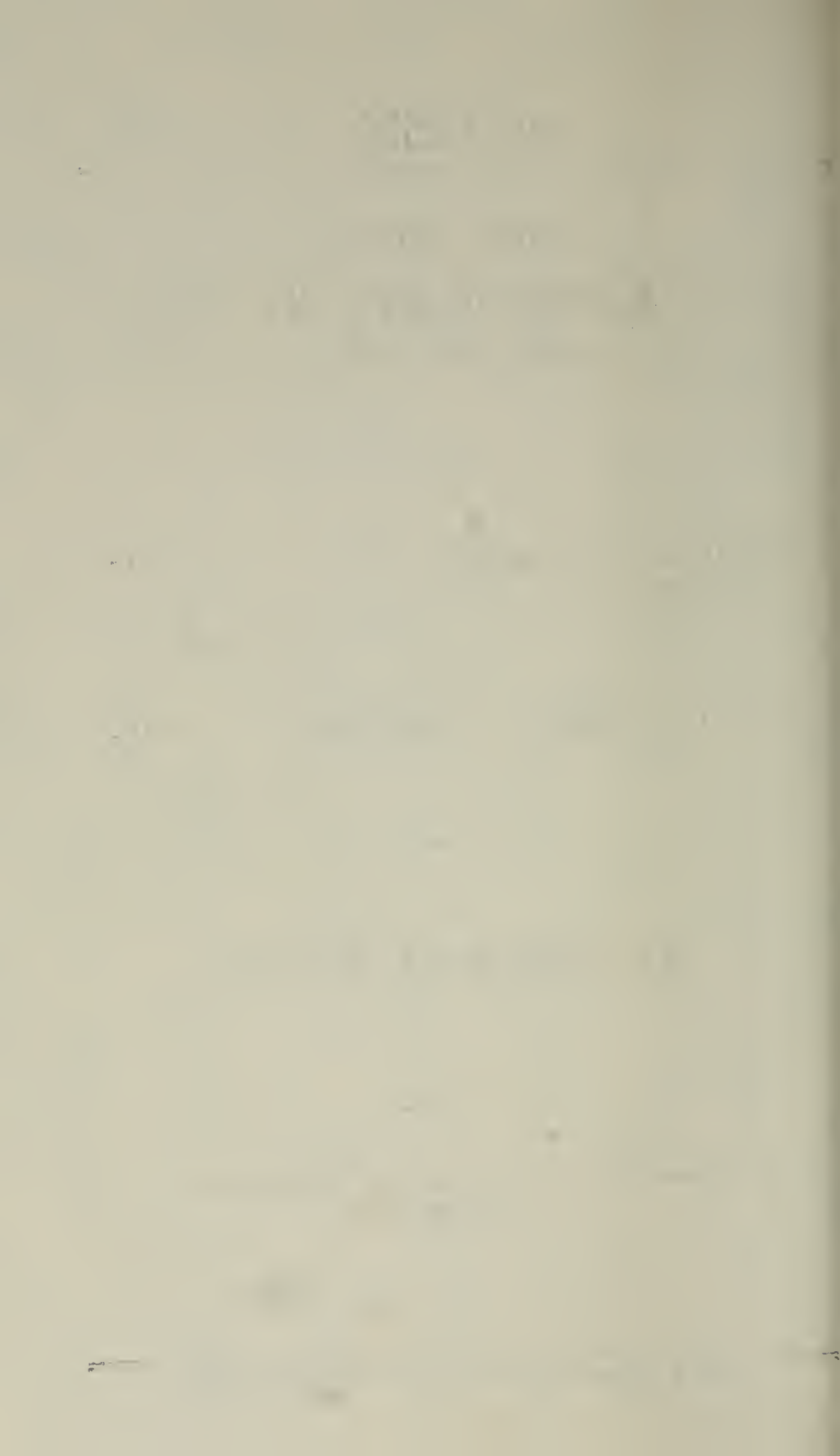
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

LITTLE, LeSOURD, PALMER, SCOTT &
SLEMMONS,
BROCKMAN ADAMS,
Hoge Bldg.,
Seattle 4, Washington,
For the Petitioners.

CHARLES K. RICE,
Asst. U. S. Attorney General;
ELLIS N. SLACK,
Attorney,
Dept. of Justice,
Washington 25, D. C.,
For the Respondent.

The Tax Court of the United States

Docket No. 53929

ARTHUR L. LAWRENCE and ALMA P. LAW-
RENCE,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (District Director of Internal Revenue, Seattle 4, Washington, A:R-VEZ:90D:vaw), dated May 10, 1954, and, as a basis for these proceedings allege as follows:

I.

The petitioners reside at 1605 Fremont Street, Las Vegas, Nevada. The return for the period here involved was filed with the Collector of Internal Revenue, Los Angeles, California.

II.

The notice of deficiency, a copy of which is attached hereto and made a part of this petition by reference, is dated May 10, 1954. (Exhibit A.)

III.

The taxes in controversy are income taxes for the calendar year 1948 in the amount of \$2,931.14.

IV.

The determination of tax set forth in the said notice of deficiency is based upon the following errors:

1. The Commissioner erred in increasing petitioners' taxable income by adjusting the amount reported as capital gain, upon the complete liquidation of Midway Peerless Oil Company, including therein as part of the distribution of assets received an amount depicted as the ascertainable fair market value of the company's leasehold.

2. The Commissioner erred in increasing petitioners' taxable income by including as part of the distribution from Midway Peerless Oil Company the value of crude oil on hand and materials and supplies.

3. The Commissioner erred in asserting deficiency for the year 1948, closed by the running of the statute of limitations.

V.

The facts upon which petitioners rely are as follows:

1. The petitioner, Arthur L. Lawrence, acquired on April 7, 1942, 2,111 shares of stock of Midway Peerless Oil Company from the Estate of Lucille Manley.

2. Petitioner's stock holdings represented 4.342094% of the outstanding stock of Midway Peerless Oil Company.

3. Prior to the adoption of the resolution to dissolve, Midway Peerless Oil Company had entered into an agreement with M. H. Whittier Company, a partnership, whereby the latter was to continue the operation of these leasehold properties.

4. At a stockholders' meeting on or about December 3, 1948, it was resolved to dissolve Midway Peerless Oil Company as of the close of business December 15, 1948, by surrender to the corporation of all stock outstanding.

5. Petitioner, Arthur L. Lawrence, elected to accept Option A, of the corporate plan of distribution, whereby he received, pro rata to his stock holdings, the following assets:

- a. An assignment of participating royalty.
- b. An undivided interest in leasehold equipment.
- c. Cash, the pro rata share by which the total net value of all the assets of the corporation exceeded the value of the leases and leasehold equipment.

6. The terms set forth in said assignment of participating royalty give unto petitioner, Arthur L. Lawrence, the right to receive proceeds upon the sale of specified deposits contingent, however, upon the fact that production and proceeds of such deposits on sale are in excess of expenses incurred in production thereof by the operator, M. H. Whittier Company.

7. The present operators, M. H. Whittier Com-

pany, have the right to terminate said lease at their discretion.

8. Petitioner can in no way be authorized or in any manner allowed to participate in the management and control of the properties.

9. Payments, if any, to be received under this agreement are predicated upon the successful operation of the property by M. H. Whittier Company.

10. The assignment of participating royalty agreement is thus only a promise unto petitioner, Arthur L. Lawrence, by the corporation that he may receive future money payments wholly contingent upon facts and circumstances beyond the control of petitioner, and which are not possible to foretell with anything like fair certainty.

11. Petitioners have reported all receipts from M. H. Whittier Company under the participating royalty agreement when received.

12. Respondent has determined that petitioners' capital gain should be increased \$20,193.36, which he contends represents the fair market value of petitioners' distributive share of the corporate assets of Midway Peerless Oil Company. The purported values determined by respondent are as follows:

Oil reserves—Oil lease.....	\$20,104.18
Crue oil on hand.....	83.00
Materials and supplies.....	6.18

Total\$20,193.36

13. Respondent, in determination of the fair market value of the assignment of participating royalty mentioned in 5(a) above, has used as a basis the appraisal value of the corporation oil lease.

14. Petitioners have no knowledge of any sales or negotiations for sale of said participating royalty agreements by any of the former shareholders and, therefore, deny that any such sales have occurred.

15. Respondent has assumed that the entire estimated oil reserves, covered by the oil lease, will be extracted, saved and sold and that there was a readily ascertainable market value where, in fact, no market existed.

16. Petitioners reported, on a statement, attached to Schedule D of their return, all pertinent facts and figures regarding said liquidating distribution of Midway Peerless Oil Company. Petitioners' return set forth clearly, without omission, all values received. Code section 275(c) applies only where taxpayer has failed to make a return of some taxable gain.

17. Section 275(e) of the Internal Revenue Code states as follows:

“(e) Distributions in Liquidation to Shareholders—If a taxpayer omits from gross income an amount properly includible therein under section 115(c) as an amount distributed in liquidation of a corporation, other than a foreign personal holding company, the tax may be assessed, or a proceeding in court for the col-

lection of such tax may be begun without assessment, at any time within four years after the return was filed.”

Wherefore, petitioners pray that the Court may hear the proceeding and:

1. Determine that the Commissioner erred in increasing petitioners' taxable income through his determination of fair market value of the assignment of participating royalty distributed.

2. Determine that Commissioner erred in increasing petitioners' income through inclusion of the value of crude oil on hand and materials and supplies.

3. Determine that the Commissioner erred in asserting deficiencies for the year 1948, closed by the running of the statute of limitations under Section 275(e) of the Internal Revenue Code.

4. Grant such other and further relief as the Court may deem proper.

/s/ E. P. JARVIS,

Certified Public Accountant,
Counsel for Petitioners.

Duly verified.

EXHIBIT A

Form 1230

U. S. Treasury Department
Office of the District Director of Internal Revenue
905 Second Avenue Building
Seattle 4, Washington

Air Mail

May 10, 1954.

Internal Revenue Service
In replying refer to A:R
VEZ:90D:jaw

Mr. Arthur L. Lawrence and Mrs. Alma P. Lawrence,
Husband and Wife,
1605 Fremont Street,
Las Vegas, Nevada.

Dear Mr. & Mrs. Lawrence:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1948, discloses a deficiency or deficiencies of \$2,931.14, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the

deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturday, Sundays and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the District Director of Internal Revenue, Audit Division, 905 Second Avenue Building, Seattle 4, Washington. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is the earlier.

Very truly yours,

T. COLEMAN ANDREWS,
Commissioner;

By /s/ WILLIAM E. FRANK,
District Director of Internal
Revenue.

Enclosures:

Statement

Form 1276

Agreement Form

A:R
VEZ:90D:jaw

Statement

Mr. Arthur L. Lawrence and Mrs. Alma P. Lawrence
Husband and Wife
Formerly Los Angeles, California
Now 1605 Fremont Street
Las Vegas, Nevada

Tax Liability for the Taxable Year Ended December 31, 1948

	Deficiency
Income tax	\$2,931.14

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated May 3, 1954.

Adjustments to Net Income

Net income as disclosed by return, Form 1040.....	\$12,984.21
Unallowable deductions and additional income:	
(a) Capital gain	10,096.68
Net income adjusted	\$23,080.89

Explanation of Adjustments

(a) On your return you reported a long-term capital gain of \$8,639.81, taken into account at 50% or \$4,319.91, upon the distribution of assets in liquidation made by Midway Peerless Oil Company on December 15, 1948. It has been determined that the fair market value of assets received by you as a result of the distribution was as follows:

Oil lease	\$20,104.18
Leasehold equipment	1,507.27
Employee cottages	146.33
Crude oil on hand.....	83.00
Materials and supplies.....	6.18
Cash and other assets.....	8,886.11
Total	\$30,733.07

Your gain is therefore recomputed as follows:

Fair market value of assets received.....	\$30,733.07
Basis of stock acquired 4-7-42.....	1,899.90
<hr/>	
Recognized gain	\$28,833.17
Taken into account at 50%.....	14,416.59
Reported on return.....	4,319.91
<hr/>	
Increase in capital gain.....	\$10,096.68

Your reported net income is increased accordingly.

Computation of Tax

Net income adjusted	\$23,080.89
Less: Exemptions (2 x \$600).....	1,200.00
<hr/>	
Income subject to tentative tax.....	\$21,880.89
One-half of such income for joint return.....	\$10,940.45
Tentative tax	2,997.38
Tax reduction: 17% of \$ 400.00 \$ 68.00.....	
12% of 2,597.38 311.69.....	379.69
<hr/>	
Balance	\$ 2,617.69
Correct income tax liability for joint return	
(2 x \$2,617.69)	5,235.38
Income tax liability disclosed by return,	
account #9117502	2,304.24
<hr/>	
Deficiency in income tax	\$ 2,931.14

Received and filed July 22, 1954, T.C.U.S.

Served July 23, 1954.

[Title of Tax Court and Cause.]

ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to

the petition filed herein, admits, denies and alleges as follows:

I.

Admits the allegations contained in paragraph I of the petition.

II.

Admits the allegations contained in paragraph II of the petition.

III.

Admits the allegations contained in paragraph III of the petition.

IV.

1 to 3, inclusive. Denies that in determining the deficiency asserted in the statutory notice of deficiency herein the respondent committed any error, and specifically denies the allegations of error set forth in subparagraphs 1 to 3, inclusive, of paragraph IV of the petition.

V.

1. Denies the allegations contained in subparagraph 1 of paragraph V of the petition except it is admitted that the petitioner, Arthur L. Lawrence, acquired on April 7, 1942, 2,111 shares of stock of Midway Peerless Oil Company.

2. Admits the allegations contained in subparagraph 2 of paragraph V of the petition.

3. Denies the allegations contained in subparagraph 3 of paragraph V of the petition.

4. Admits the allegations contained in subparagraph 4 of paragraph V of the petition.

5 to 11, inclusive. Denies the allegations contained

in subparagraphs 5 to 11, inclusive, of paragraph V of the petition.

12. Admits the allegations contained in subparagraph 12 of paragraph V of the petition.

13 to 16, inclusive. Denies the allegations contained in subparagraphs 13 to 16, inclusive, of paragraph V of the petition.

17. Admits the allegations contained in subparagraph 17 of paragraph V of the petition.

VI.

Denies generally and specifically each and every allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

VII.

Further answering the petition respondent alleges as follows:

(a) That petitioners omitted from gross income reported in their 1948 income tax return an amount properly includable therein which is in excess of 25 per centum of the amount of gross income stated in said return; therefore, the income tax for 1948 may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five years after the return was filed as provided by Section 275(c) of the Internal Revenue Code.

(b) The petitioners' 1948 income tax return was filed on May 31, 1949, and the notice of deficiency from which this appeal is taken was mailed to the

petitioners on May 10, 1954, which date was within five years from the filing of the return.

Wherefore, it is prayed that the petitioners' appeal be denied and that the Commissioner's determination of deficiency be approved.

/s/ DANIEL A. TAYLOR, W.H.P.
Chief Counsel, Internal
Revenue Service.

Of Counsel:

MELVIN L. SEARS,
Regional Counsel;

JOHN O. DURKAN,
Special Attorney, Internal
Revenue Service.

Filed September 2, 1954, T.C.U.S.

[Title of Tax Court and Cause.]

REPLY

The above-named petitioners, for reply to the allegations affirmatively set forth by the respondent in his answer, admit and deny as follows:

VII.

(a) Denies the allegations contained in subparagraph (a) of paragraph VII of the answer.

(b) Petitioners admit that they filed a United States income tax return for the calendar year 1948 during the month of May, 1949. Petitioners admit

that respondent did on May 10, 1954, mail to petitioners herein the notice of deficiency for the taxable year 1948, but petitioners deny the remaining allegations of subparagraph (b) of paragraph VII of the answer.

(c) Deny all of the material allegations of respondent's answer not hereinbefore specifically admitted.

Wherefore, it is prayed that the affirmative relief requested by the respondent in his answer be denied, and that relief be granted as sought in the petition.

/s/ E. P. JARVIS,

Certified Public Accountant,
Counsel for Petitioners.

Received and filed October 11, 1954, T.C.U.S.

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

Petitioners and respondent, by their respective counsel, stipulate that the merits of this proceeding may be decided on the basis of the following facts:

1. The petitioners reside at 1605 Fremont Street, Las Vegas, Nevada. They filed a joint United States income tax return for the calendar year 1948 with the Collector of Internal Revenue, Los Angeles, California, on May 31, 1949. A copy of said return, together with extensions of time for filing same, is attached hereto as Exhibit A-1.

2. On May 10, 1954, the Commissioner of Internal Revenue mailed to the petitioners a notice of deficiency in income tax in the amount of \$2,931.14 for the calendar year 1948. A copy of said notice, together with the statement which is referred to therein, is attached hereto as Exhibit B-2. The determination as contained in Exhibit B-2 is, in all respects, correct.

3. Petitioner, Arthur L. Lawrence, acquired 2,111 shares of stock of the Midway Peerless Oil Company on April 7, 1942. This amounted to 4.342094% of the outstanding stock. At a stockholders' meeting, on or about December 3, 1948, it was resolved to dissolve Midway Peerless Oil Company as of the close of business December 15, 1948, by surrender to the corporation of all stock outstanding. The amount of long-term capital gain derived by Arthur L. Lawrence upon the distribution in complete liquidation made by Midway Peerless Oil Company on December 15, 1948, is set forth on page one of the "Statement" in Exhibit B-2.

4. The only issue to be decided by the Court is that of the applicability of the statute of limitations, as pleaded in the petition and answer.

/s/ BROCKMAN ADAMS,
Counsel for Petitioners.

/s/ JOHN POTTS BARNES,

W.H.P.
Chief Counsel, Internal Revenue Service, Counsel
for Respondent.

U. S. INDIVIDUAL INCOME TAX RETURN

1948

For calendar year 1948 or fiscal year beginning 1948, and ending 1948

EMPLOYEES: Instead of this form, you may use Form 1040A if your total income was less than \$5,000, consisting wholly of wages shown on Form W-2, or of such wages and not more than \$100 of other wages, dividends, and interest.

Name Arthur L. Lawrence and Alma P. Lawrence
(PLEASE PRINT If this is a joint return of husband and wife, use first names of both)
HOME ADDRESS 58184 Warmington Way
(PLEASE PRINT Street and number or rural route)
Los Angeles 42 California
(City, town, or post office) (Postal zone number) (State)
Occupation Inspector Social Security No. 706-03-4353
Housewife 537-10-3934

Do not write in these spaces
File Code
Serial No. 9117502
(Cashier's Stamp)
MAY 31 1949
COLL. INT. REV.
LOS ANGELES, CAL.
No. 10

1. List your own name, if married with wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband). List names of other close relatives (as defined in instructions) with 1948 incomes of less than \$500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

Name (please print)

Check to show whether you (or your wife) were at the end of your taxable year—

DEAD OR OVER

BLIND

On lines a and b below—
Write 1 if neither 65 nor blind,
Write 2 if either 65 or blind,
Write 3 if both 65 and blind

Your name Arthur L. Lawrence
Wife's (or husband's name) Alma P. Lawrence
Name of Other Dependent Relative

Yes ☐ No ☒ Yes ☐ No ☒
Yes ☐ No ☒ Yes ☐ No ☒
Relationship

a. Number of exemptions for you 2
b. Number of exemptions for other dependents 0
c. Number of different persons for whom you claim exemptions 2



Enter here total number of exemptions claimed (yours and your wife's plus one for each dependent listed above) 2

2. Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1948, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Also enter amount of income tax withheld. Members of Armed Forces and persons obtaining traveling or reimbursed expenses, see instructions.

Employer's Name

Where Employed (City and State)

Amount of Income Tax Withheld

Total Wages

King County Clerk's Office Seattle, Washington \$ 183.00 \$ 2,188.71

Enter totals: \$ 183.00 \$ 2,188.71

3. Enter here the total amount of your dividends
4. Enter here the total amount of your interest including interest from Government obligations unless wholly exempt from taxation
5. If you received any other income, give details on page 2 and enter the total here
6. Add income shown in items 2, 3, 4, and 5, and enter the total here

IF YOUR INCOME WAS LESS THAN \$5,000 You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.
IF YOUR INCOME WAS \$5,000 OR MORE. Disregard the tax table and compute your tax on page 3. You may either take a standard deduction or itemize your deductions, whichever is to your advantage.
HUSBAND AND WIFE. To obtain benefits of split-income provisions, husband and wife must file a joint return. If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

7. Enter your tax from table on page 4, or from line 18, page 3 \$ 2,304.24

8. How much have you paid on your 1948 income tax?
(A) Total tax in item 2, above (attach Original Forms W-2) \$ 183.00
(B) By payments on 1948 Declaration of Estimated Tax \$ 5,861.00

Enter total here → \$ 6,044.00

9. If your tax (item 7) is larger than payments (item 8), enter BALANCE OF TAX DUE here \$ 0.00

This balance of tax due must be paid in full with return.

10. If your payments (item 8) are larger than your tax (item 7), enter the OVERPAYMENT here \$ 2,739.76

Check (✓) whether you want this overpayment refunded to you ☒ or Credited on your 1949 estimated tax ☐

Enter total here \$ 2,739.76

If you filed a return for a prior year, what was the latest year? 1947

To which Collector's office was it sent? Tacoma, Washington

To which Collector's office did you pay (Tacoma, Washington) amount claimed in item 8 (B), above? Los Angeles, Calif.

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

M. J. Thompson 5/16/49 (Date)

JARVIS & MOORE CPAs (Name of firm or employer, if any)

(Signature of preparer) Arthur L. Lawrence 5/18/49 (Date)

(Signature of taxpayer's wife or husband, if any) Alma P. Lawrence 5/18/49

To ensure early handling of split-income returns, file by May 31, 1949

Do not use this page if your income is wholly from salaries, wages, dividends, and interest

Page 1

Schedule A.—INCOME FROM ANNUITIES OR PENSIONS

1. Amount received (total amount you paid in)	\$	4. Total amount received this year	\$
2. Amount received tax-free in prior years		5. Excess, if any, of line 4 over line 3	
3. Remainder of cost (line 1 less line 2)	\$	6. Enter line 5, or 3 percent of line 1, whichever is greater (but do not enter more than line 4)	\$

Schedule B.—INCOME FROM RENTS AND ROYALTIES

1. Real and location of property	2. Amount of rent or royalty	3. Depreciation or depletion (explain on Schedule F)	4. Royalty (explain on Schedule G)	5. Other expenses (explain on Schedule G)
1. Shell Oil Co., Houston, Texas	\$ 311.52	\$ 85.67		\$ 27
2. Net profit (or loss) (col. 2 less sum of cols. 3, 4, and 5)	\$ 311.52	\$ 85.67		\$ 27

221 58

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Partners should obtain Form 1040P)

(1) Nature of business	(2) Business name
Business address	
Do NOT include in this schedule cost of goods withdrawn for personal use or deductions not connected with business or profession.	
Total receipts	\$
COST OF GOODS SOLD	OTHER BUSINESS DEDUCTIONS
1. Explain where inventories are an income-determining factor. Use the letters "C," "M," or "I" in lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower in line 8.	11. Salaries and wages (not on line 4)
2. Inventory at beginning of year	12. Interest on business indebtedness
3. Merchandise bought for sale	13. Taxes on business and business property
4. Labor	14. Losses (explain on Schedule G)
5. Material and supplies	15. Bad debts arising from sale of services
6. Other costs	16. Depreciation, depletion, and depletion (explain on Schedule F)
7. Explain in Schedule G	17. Repairs and maintenance expenses (explain on Schedule G)
8. Total of lines 2 to 6	18. Amortization of business facilities (explain on Schedule G)
9. Less inventory at end of year	19. Net profit or loss (line 1 less line 8)
10. Net cost of goods sold (line 7 less line 8)	
11. Gross profit (line 1 less line 9)	

Schedule D.—GAINS AND LOSSES FROM SALES OF EXCHANGE OF CAPITAL ASSETS, ETC.

Net gain (or loss) from sale or exchange of capital assets (if more than one, list each separately)	\$ 491.78
Net gain (or loss) from sale or exchange of property other than capital assets (if more than one, list each separately)	

Schedule E.—INCOME FROM PARTNERSHIPS, ESTATES, AND OTHER SOURCES

Name and address of partnership, estate, etc.	Manley & McInnis
Name and address of estate, if trust	San Francisco, California
Other sources (state nature)	
Total	\$ 2,751.20

Total income from above sources (Enter as item 5, page 1)

\$ 7,464.56

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPLETION CLAIMED IN SCHEDULES B AND C

1. Kind of property (If oil, gas, or other mineral, specify)	2. Date acquired	3. Cost or other basis (if not made, list as other method on line 3)	4. Amount of depletion claimed	5. Depreciation or depletion in prior years	6. Recouping cost or other basis to be recovered	7. Is claimed as cost of acquisition of depreciable property?	8. If claimed, explain the basis for beginning of year	9. Depreciation allowable this year
1. Royalty	4-7-42	Depletion under Sec. 114(b)(3) IRC	\$ 85.67					

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

1. Explanation	2. Amount
1. Oil interest tax-Jones County, Texas	\$ 27

Form W-2
U.S. Treasury Department
General Services Administration

WITHHOLDING STATEMENT—1947
Wages Paid and Income Tax Withheld

ORIGINAL
Do Not Lose This Statement

TO WHOM PAID (Print name, full address, and Soc. Sec. No.)

Mr. J. R. [unclear]
605 - [unclear]
Seattle, Wash.

TO EMPLOYEE:

You may use the form on the back of this original Form W-2 as your income tax return under certain conditions. Before you use it, read the instructions on the back of the attached Employee's Copy.

DO NOT WRITE IN THIS SPACE—FOR COLLECTOR'S USE ONLY

TO EMPLOYEE: Change name and address if not correctly shown

Total wages (before pay-roll deductions) paid in 1947	Federal income tax withheld, if any
2189.77	107.00
\$	\$

EMPLOYER BY WHOM PAID (Name, address, and U.S. Identification No.)

King County - Works of [unclear]
902 Court City [unclear]
Seattle, Wash.

Tax	\$
Credits	\$
Balance due or refund	\$
Interest on refund	\$
Total	\$

IT:479

Treasury Department
Internal Revenue Service
Los Angeles 12, California

May 19, 1949.

In reply refer to
IT:EXT:RMC
MI 8111—Ext. 371

Form 1040

Mr. & Mrs. Arthur L. Lawrence (Alma P.),
c/o Jarvis & Moore,
23rd Floor, Smith Tower,
Seattle 4, Washington.

Dear Mr. & Mrs. Lawrence:

Receipt is acknowledged of your recent request for extension of time within which to file your income tax return for the calendar year 1948.

It is not the policy of the Bureau to grant extensions of time for filing income tax returns except in cases where the circumstances clearly warrant such action.

You are, therefore, advised that the reasons stated in your request do not warrant granting a further extension, but you are allowed until 5-31-49 within which to file your return before it will be considered delinquent and subject to the penalties provided by law.

This Letter or Copy Thereof Should Be Attached to Your Return, When Filed, as Evidence of the Authorization Herein Granted.

Very truly yours,

HARRY C. WESTOVER,

Collector;

By /s/ C. J. HOGAN,

Chief, Income Tax Division.

RMC:js

IT:39

Treasury Department
Internal Revenue Service
Los Angeles 12, California

April 15, 1949.

In replying refer to

IT:EXT:RMC

MI 8111—Ext. 371

Form 1040

Mr. & Mrs. Arthur L. Lawrence (Alma P.),
c/o Jarvis & Moore,
23rd Floor, Smith Tower,
Seattle 4, Washington.

Dear Mr. & Mrs. Lawrence:

Receipt is acknowledged of your application of recent date requesting for the reasons stated an extension of time within which to file your return of income for the calendar year 1948.

A further extension of time to 5-15-49 is hereby granted within which the above-mentioned return may be filed. In all cases where an extension of time is granted, interest is collectible at the rate of one-half of one per cent a month upon the unpaid tax from the original due date to the date of payment.

A Copy of This Letter Must Be Attached to the Return When It Is Filed as Authority for the Extension of Time Herein Granted.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner;

By /s/ HARRY C. WESTOVER,
Collector.

RMC:Lw

IT:5

Treasury Department
Internal Revenue Service
Los Angeles 12, California

In reply refer to

IT:EXT:RMC

MI 8111—Ext. 371

Form 1040

March 10, 1949.

Mr. Arthur L. Lawrence,
c/o Jarvis & Moore,
23rd Floor, Smith Tower,
Seattle 4, Washington.

Dear Mr. Lawrence:

Receipt is acknowledged of your application of recent date requesting, for the reasons stated, an extension of time within which to file your return of income for the calendar year 1948.

An extension of time to 4-15-49 is hereby granted within which this return may be filed. In all cases where an extension of time is granted, interest is collectible at the rate of one-half of one per cent a month upon the unpaid tax from the original due date of the return to the date of payment.

An extension of time cannot be granted for the filing of an income tax return on Form 1040A; therefore, it will be necessary when filing to use Form 1040.

A Copy of This Letter Must Be Attached to the Return When It Is Filed as Authority for the Extension of Time Herein Granted.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner;

By /s/ HARRY C. WESTOVER,
Collector.

RMC:gfw

IT:5

Treasury Department
Internal Revenue Service
Los Angeles 12, California

March 10, 1949.

In reply refer to
IT:EXT:RMC
MI 8111—Ext. 371

Form 1040

Mrs. Alma P. Lawrence,
c/o Jarvis & Moore,
23rd Floor, Smith Tower,
Seattle 4, Washington.

Dear Mrs. Lawrence:

Receipt is acknowledged of your application of recent date requesting, for the reasons stated, an extension of time within which to file your return of income for the calendar year 1948.

An extension of time to 4-15-49 is hereby granted within which this return may be filed. In all cases where an extension of time is granted, interest is collectible at the rate of one-half of one per cent a month upon the unpaid tax from the original due date of the return to the date of payment.

An extension of time cannot be granted for the filing of an income tax return on Form 1040A;

therefore, it will be necessary when filing to use Form 1040.

A Copy of This Letter Must Be Attached to the Return When It Is Filed as Authority for the Extension of Time Herein Granted.

Very truly yours,

GEO. J. SCHOENEMAN,
Commissioner;

By /s/ HARRY C. WESTOVER,
Collector.

RMC:gfw

1948

Schedule D (File with Form 1040)

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

SCHEDULE OF GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY

For Calendar Year 1948 or fiscal year beginning

1948, and ending

1949

NAME AND ADDRESS Arthur L. Lawrence and Alma P. Lawrence, 5618 1/2 Marmion Way, Los Angeles 42, California
(1) CAPITAL ASSETS

1 Kind of property (if necessary, attach statement of descriptive details; see instructions below)	2 Date acquired Mo Day Year	3 Date sold Mo Day Year	4 Gross sales price (see instructions)	5 Depreciation allowed (or allowable) same as on Form 112 (attach schedule)	6 Cost or other basis (if not purchased, attach explanation)	7 Expenses of sale and cost of improvements subsequent to acquisition or March 1, 1913
--	--------------------------------	----------------------------	--	---	--	--

SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 6 MONTHS

200 shares Paramount Pict. Inc., common	12/30/47	5/4/48	\$ 4,500 00	\$ - -	\$ 4,241 00	\$ 50 91
1 Totals			\$ 4,500 00	\$ - -	\$ 4,241 00	\$ 50 91
2 Net short-term gain or loss other than from partnerships and common trust funds (column 4 plus column 5 minus the sum of columns 6 and 7, of line 1).						\$ 208 09
3 Enter your share of the net short-term gain or loss from partnerships and common trust funds. Enter here the sum of gains or losses, or difference between gain and loss, shown in lines 2 and 3.						\$ 208 09

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD MORE THAN 6 MONTHS

1 Sh. Pacific Gas & Electric Co.	3/22/46	3/30/48	\$ 1 13	\$ -	\$ 1 16	\$ 01
1 Sh. Curtiss Wright, common	10/29/46	5/25/48	762 50	\$ -	813 00	14 90
1 Sh. 20th Century Fox Film Corp., common	4/7/42	5/4/48	216 25	\$ -	91 82	7 21
1 Sh. Central Bureau Mining Co., Capital	1/11/46	5/19/48	70 35	\$ -	190 95	3 61
1 Sh. Midway Peerless Oil Co.—Common	4/7/42	12/24/48	10,539 71	(A) 1,899 90		0
5 Totals			\$ 11,589 94	\$ -	\$ 2,996 83	\$ 25 73
6 Net long-term gain or loss other than from partnerships and common trust funds (column 4 plus column 5 minus the sum of columns 6 and 7, of line 5).						\$ 8,567 38
7 Enter the full amount of your share of the net long-term gain or loss from partnerships and common trust funds.						\$ 0
8 Enter here the sum of gains or losses, or difference between gain and loss, shown in lines 6 and 7.						\$ 8,567 38
9 Enter 50 percent of line 8. This is the amount to be taken into account in summary below.						\$ 4,283 69

10 Summary of Capital Gains (use only if gains exceed losses in lines 4 and 9):

(a) Net gain for 1948 (either the sum of gains or difference between gains and losses in lines 4 and 9)	\$ 4,491 78
(b) Capital loss carry-over, 1943-1947 inclusive	None
(c) If line (a) exceeds line (b), enter this excess here and on line 1, Schedule D, page 2, Form 1040	\$ 4,491 78
(d) If line (b) exceeds line (a), enter the excess here and use line (a) to determine allowable loss	\$ -
(e) Enter here and on line 1, Schedule D, page 2, Form 1040, the smallest of the following: (1) the amount on line (d); (2) net income (adjusted gross income if tax table is used) computed without regard to capital gains or losses; or (3) \$1,000	\$ -
(f) Enter here the amount on line (e) plus any capital loss carry-over from 1943 which was not used against line (a) or in line (e)	\$ -
(g) Subtract line (f) from line (d) and enter the remainder here. This is your capital loss carry-over to 1949	\$ -

11 Summary of Capital Losses (use only if losses exceed gains in lines 4 and 9):

(a) Net loss for 1948 (either the sum of losses or difference between losses and gains in lines 4 and 9)	\$ -
(b) Capital loss carry-over, 1943-1947 inclusive	\$ -
(c) Total of lines (a) and (b)	\$ -
(d) Enter here and on line 1, Schedule D, page 2, Form 1040, the smallest of the following: (1) the amount on line (c); (2) net income (adjusted gross income if tax table is used, computed without regard to capital gains or losses); or (3) \$1,000	\$ -
(e) Enter here the amount on line (d) plus the amount of any 1943 capital loss carry-over not used in line (d)	\$ -
(f) Subtract line (e) from line (c) and enter the remainder here. This is your capital loss carry-over to 1949	\$ -

(2) PROPERTY OTHER THAN CAPITAL ASSETS

1 Kind of property	2 Date acquired	3 Gross sales price (cost or other basis)	4 Depreciation allowed (or allowable) same as on Form 112 (attach schedule)	5 Cost or other basis (if not purchased, attach explanation)	6 Expenses of sale and cost of improvements subsequent to acquisition or March 1, 1913
		\$	\$	\$	\$
1 Totals		\$	\$	\$	\$

2 Total net gain or loss (columns 3 plus 4 minus the sum of columns 5 and 6). Enter on line 2, Schedule D, page 2, Form 1040

See schedule attached

Schedule D—Note A

Arthur L. Lawrence and Alma P. Lawrence
5818¼ Marmion Way, Los Angeles 42, California
Form 1040—Individual Income Tax Return

Computation of Gain on Liquidation of Midway Peerless Oil Company

Item	Description	Value of Assets Distributed- Estimated 12-15-48 (Basis for Form 1099L)		Value of Assets Distributed- Revised Appraisal	
		Total	Share of A. L. Lawrence (4.3421%)	Total	Share of A. L. Lawrence (4.3421%)
1	Lease	\$573,420.78		\$448,726.99	\$19,484.15
2	Leasehold equipment	34,713.00	1,507.27	34,713.00	1,507.27
3	Buildings—Employee cottages	—0—	—0—	3,370.00	146.33
4	Inventories:				
	(a) Crude oil on hand 12/15/48.....	1,911.40	83.00	1,911.40	83.00
	(b) Materials & supplies.....	142.39	6.18	142.39	6.18
		\$610,187.57	\$26,494.92	\$488,863.78	\$21,226.93
5	Cash & other assets.....	204,650.38	8,886.11	204,650.38	8,886.11
	Totals	\$814,837.95	\$35,381.03	\$693,514.16	\$30,113.04

Item 1—Lease is not readily marketable and has no ascertainable market value. Based upon the decision *Agnes F. Smith, Plaintiff, v. Harry C. Westover, Defendant*, 48-2, U.S.T.C. par. 9351, affirmed by the United States Court of Appeals for the Ninth Circuit, 173 Fed., (2d) 91 based upon the decision of the Supreme Court of the United States in *Burnet v. Logan* (X-1 CB 345), future payments will be returned as capital gains if and when received.

Item 4—Part of lease, see item 1, above.

Computation of Value Received During 1948 by Arthur L. Lawrence

Cash received (item 5, above).....	\$8,886.11
Leasehold equipment (item 2, above).....	1,507.27
Buildings—Employee cottages (item 3, above).....	146.33
<hr/>	
Total value received in 1948—Schedule D of Return.....	\$10,539.71
Basis of stock—Schedule D of Return.....	1,899.90
<hr/>	
Realized Long-Term Gain—Calendar Year 1948.....	\$ 8,639.81
<hr/> <hr/>	

EXHIBIT B-2

Form 1230

U. S. Treasury Department
Office of the District Director of Internal Revenue
905 Second Avenue Building
Seattle 4, Washington

May 10, 1954.

“Air Mail”

Internal Revenue Service
In replying refer to A:R
VEZ:90D:jaw

Mr. Arthur L. Lawrence and Mrs. Alma P. Lawrence,
Husband and Wife,
1605 Fremont Street,
Las Vegas, Nevada.

Dear Mr. & Mrs. Lawrence:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1948, discloses a deficiency or deficiencies of \$2,931.14, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the

deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the District Director of Internal Revenue, Audit Division, 905 Second Avenue Building, Seattle 4, Washington. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is the earlier.

Very truly yours,

T. COLEMAN ANDREWS,
Commissioner;

By /s/ WILLIAM E. FRANK,
District Director of Internal
Revenue.

Enclosures:

Statement

Form 1276

Agreement Form

A :R

VEZ:90D :jaw

Statement

Mr. Arthur L. Lawrence and Mrs. Alma P. Lawrence

Husband and Wife

Formerly Los Angeles, California

Now 1605 Fremont Street

Las Vegas, Nevada

Tax Liability for the Taxable Year Ended December 31, 1948

	Deficiency
Income tax	\$2,931.14

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated May 3, 1954.

Adjustments to Net Income

Net income as disclosed by return, Form 1040.....	\$12,984.21
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Unallowable deductions and additional income:

(a) Capital gain	10,096.68
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Net income adjusted	\$23,080.89
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Explanation of Adjustments

(a) On your return you reported a long-term capital gain of \$8,639.81, taken into account at 50% or \$4,319.91, upon the distribution of assets in liquidation made by Midway Peerless Oil Company on December 15, 1948. It has been determined that the fair market value of assets received by you as a result of the distribution was as follows:

Oil lease	\$20,104.18
Leasehold equipment	1,507.27
Employee cottages	146.33
Crude oil on hand.....	83.00
Materials and supplies.....	6.18
Cash and other assets.....	8,886.11
Total	\$30,733.07

Your gain is therefore recomputed as follows:

Fair market value of assets received.....	\$30,733.07
Basis of stock acquired 4-7-42.....	1,899.90
<hr/>	
Recognized gain	28,833.17
Taken into account at 50%.....	14,416.59
Reported on return.....	4,319.91
<hr/>	
Increase in capital gain.....	\$10,096.68

Your reported net income is increased accordingly.

Computation of Tax

Net income adjusted.....	\$23,080.89
Less: Exemptions (2 x \$600).....	1,200.00
<hr/>	
Income subject to tentative tax.....	\$21,880.89
One-half of such income for joint return.....	\$10,940.45
Tentative tax	2,997.38
Tax reduction: 17% of \$ 400.00 \$ 68.00.....	
12% of 2,597.38 311.69.....	379.69
<hr/>	
Balance	\$ 2,617.69
Correct income tax liability for joint return	
(2 x \$2,617.69)	5,235.38
Income tax liability disclosed by return,	
account #9117502	2,304.24
<hr/>	
Deficiency in income tax	\$ 2,931.14

Lodged August 21, 1956.

Filed August 23, 1956, T.C.U.S.

Tax Court of the United States

[Title of Cause.]

Filed January 25, 1957.

Statute of Limitations—Section 275(c)—25 Per Cent Omission From Gross Income—Omission Explained in Return: The 5-year period of limitations provided by Section 275(e) applies where a taxpayer omitted from gross income shown on the return a capital gain, which omission represented more than 25 per cent of the gross income shown on the return. It is immaterial that the omission was explained on a separate sheet of paper attached to the return.

Statute of Limitations—Section 275(c)—Section 275(e): The 5-year period of Section 275(c) is applicable even though the omitted amount was a distribution in liquidation of a corporation and on that basis alone a 4-year period would have been allowed under Section 275(e).

Tax Court Policy—Consideration of Reversal by Court of Appeals: The Tax Court, having national jurisdiction rather than a jurisdiction limited to only a portion of the Nation, when reversed on an issue by a Court of Appeals, must reconsider the point in the light of the reversing opinion and then decide whether to adhere to its original views or accept the views of the reversing court.

BROCKMAN ADAMS, ESQ.,

For the Petitioners.

JOHN POTTS BARNES, ESQ.,

For the Respondent.

OPINION

Murdock, Judge:

The Commissioner determined a deficiency of \$2,931.14 in the income tax of the petitioners for 1948. The facts have been stipulated. The stipulation is adopted as the findings of fact.

The petitioners, husband and wife, filed a joint Federal income tax return for 1948 with the collector of internal revenue, Los Angeles, California, on May 31, 1949, an extension to that date for filing having been granted. The notice of deficiency was not mailed until May 10, 1954, after the 3-year period, and after the 4-year period but before the 5-year period for assessment and collection had expired. The only question for decision is whether Section 275(c) applies, giving the Commissioner five years from the filing of the return within which to assess and collect the deficiency now admitted to be due.

Section 275(c) is as follows:

(c) Omission From Gross Income: If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 5 years after the return was filed.

The petitioners have admitted that the deficiency determined by the Commissioner is correct. The

Commissioner, in determining that deficiency, included in income over \$20,000 of capital gain which the petitioners had omitted from gross income on their return. It was not included in the computation of gross income on the return. Even the taxable one-half of that amount is substantially "in excess of 25 per centum of the amount of gross income stated in the return." The petitioners do not contend otherwise.

The petitioners contend that they disclosed the nature and amount of the now admitted additional income in a manner adequate to apprise the Commissioner in a statement made a part of the return. Arthur acquired a portion of the stock of Midway Peerless Oil Company in 1942 and that company was liquidated on December 15, 1948. The liquidation resulted in the capital gain now determined by the Commissioner and agreed to by the petitioners. The petitioners reported on their return a long-term capital gain of \$8,567.38, one item of the computation of which was as follows:

Kind of Property: 2,111 Sh. Midway Peerless
Oil Co.—Com.

Date Acquired: 4/7/42.

Dated Sold: 12/24/48.

Gross Sales Price: \$10,539.71.

Cost or Other Basis: (A) \$1,899.90.

(A) See schedule attached.

The following appeared as a separate page of the return:

Schedule D—Note A

Arthur L. Lawrence and Alma P. Lawrence
5818 $\frac{1}{4}$ Marmion Way, Los Angeles 42, California
Form 1040—Individual Income Tax Return

Computation of Gain on Liquidation of Midway Peerless Oil Company

Item	Description	Value of Assets Distributed- Estimated 12-15-48 (Basis for Form 1099L)		Value of Assets Distributed- Revised Appraisal	
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3	Buildings—Employee cottages	—0—	—0—	3,370.00	146.33
4	Inventories:				
	(a) Crude oil on hand 12/15/48.....	1,911.40	83.00	1,911.40	83.00
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5	Cash & other assets.....	\$610,187.57	\$26,494.92	\$488,863.78	\$21,226.93
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	Totals	\$814,837.95	\$35,381.03	\$693,514.16	\$30,113.04

Item 1—Lease is not readily marketable and has no ascertainable market value. Based upon the decision *Agnes F. Smith, Plaintiff, v. Harry C. Westover, Defendant*, 48-2, U.S.T.C. par. 9351, affirmed by the United States Court of Appeals for the Ninth Circuit, 173 Fed., (2d) 91 based upon the decision of the Supreme Court of the United States in *Burnet v. Logan* (X-1 CB 345), future payments will be returned as capital gains if and when received.

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		<hr/>
Total value received in 1948—Schedule D of Return.....		\$10,539.71
Basis of stock—Schedule D of Return.....		1,899.90
		<hr/>
Realized Long-Term Gain—Calendar Year 1948.....		\$ 8,639.81
		<hr/> <hr/>

It is obvious from the entire return that the taxpayers made a computation of their income and omitted "from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return." The quoted words are from Section 275(c) which first appeared in the Revenue Act of 1934. The House bill had eliminated the statute of limitations in such cases but the Senate insisted upon a 5-year period, saying:

* * * For instance, a case might arise where a taxpayer failed to report a dividend because he was erroneously advised by the officers of the corporation that it was paid out of capital or he might report as income for one year an item of income which properly belonged in another year. Accordingly, your committee has provided for a 5-year statute in such cases. * * *
[CB 1939-1, Part 2, P. 619.]

The Tax Court can only apply the statute as Congress enacted it, and it has consistently held under similar circumstances that the 5-year period of limitations on assessment and collection applies rather than any shorter period, regardless of how honest the mistake and regardless of the possibility that from somewhere in the return or papers attached to it the information was given to the Commissioner of the transaction giving rise to the omitted income. *Anna M. B. Foster*, 45 B.T.A. 126, *affd.* 131 F. 2d 405; *Emma B. Maloy*, 45 B.T.A. 1104; *Estate of C. P. Hale*, 1 T.C. 121; *American Liberty*

Oil Co., 1 T.C. 386; William L. E. O'Bryan, 1 T.C. 1137; Katharine C. Ketcham, 2 T.C. 159, *affd.* (C.A.-2) 142 F. 2d 996; Oleta A. Ewald, 2 T.C. 384, *affd.* 141 F. 2d 750; M. C. Parrish & Co., 3 T.C. 119, *affd.* 147 F. 2d 284; Leslie H. Green, 7 T.C. 263, 275; Peyton G. Nevitt, 20 T.C. 318; H. Leslie Leas, 23 T.C. 1058; Dean Babbitt, 23 T.C. 850; The Colony, Inc., 26 T.C. 30.

The position taken by the petitioners in this case has now been enacted into law by Section 6501(e) (1)(A)(ii) of the Internal Revenue Code of 1954, as follows:

In determining the amount omitted from gross income, there shall not be taken into account any amount which is omitted from gross income stated in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary or his delegate of the nature and amount of such item.

This provision was not made retroactive and its legislative history states that it was a "change from existing law," thus supporting the view consistently taken by the Tax Court as to the previously existing law. H. Rept. No. 1337, 83d Cong. 2d Sess., p. A414; Sen. Rept. No. 1622, 83d Cong., 2d Sess., p. 584. The Court in *Slaff v. Commissioner*, 220 F. 2d 65, 67, recognized that this legislation changed existing law.

This Court has also held that an omission within the meaning of Section 275(c) could result from

the overstatement of cost or a similar item, even though there was no omission of an income item from the computation of income shown on the return. Estate of J. W. Gibbs, Sr., 21 T.C. 443. The present situation is not such an omission and the fact that the Tax Court has been reversed in several cases of that type and affirmed in one does not help the present taxpayer. Uptegrove Lumber Company v. Commissioner, 204 F. 2d 570; Deakman-Wells Company v. Commissioner, 213 F. 2d 894, reversing 20 T.C. 610; Goodenow v. Commission, 238 F. 2d 20, reversing 25 T.C. 1; Reis v. Commissioner, 142 F. 2d 900, affirming 1 T.C. 9 and a Tax Court Memorandum Opinion. The Court of Appeals for the Third Circuit, in the Uptegrove case, considered Section 275(c) ambiguous insofar as it applied to an omission resulting from the overstatement of cost, but it clearly differentiated that kind of an omission from one, such as is here present, where the taxpayer "leaves some item of gain out of his computation of gross income." It distinguished cases of the latter type "because the applicability of the language of the statute, 'omits from gross income,' to the given facts was so clear."

The only possible complication in the decision of the present case is whether it might be contrary to a fairly recent decision of the Court of Appeals for the Ninth Circuit, to which this case could go on appeal. The reference is to the Slaff case, *supra*. There Slaff entered only one item, salary, on each of his returns. No computation of any kind was

shown. After the one income item, reported in the place for income received, he wrote, "exempt under Section 116 I.R.C.; therefore, no taxable income." The Tax Court held that there was a complete omission of "gross taxable income" and Section 275(c) applied. The Court of Appeals reversed but stated, "We are in full accord with the rulings in" the Uptegrove and Deakman-Wells cases, *supra*, in which the opinions indicate agreement with the Tax Court in a case like the present one. See also Goode-now, *supra*. If the views of the Court of Appeals for the Ninth Circuit are the same as those of the Court of Appeals for the Third Circuit, there is no difficulty here, but if it does not distinguish this case from its Slaff case, then, even so, the Tax Court must respectfully adhere to its own views in this case.

One of the difficult problems which confronted the Tax Court soon after it was created in 1926 as the Board of Tax Appeals was what to do when an issue came before it again after a Court of Appeals had reversed its prior decision on that point. Clearly, it must thoroughly reconsider the problem in the light of the reasoning of the reversing appellate court and, if convinced thereby, the obvious procedure is to follow the higher court. But if still of the opinion that its original result was right,¹ a court of national jurisdiction to avoid confusion should follow its own honest beliefs until the Supreme Court

¹If the issue turned upon a rule of law peculiar to some state or states within that Circuit, the practice of the Tax Court has been to follow the rule as laid down for that Circuit.

decides the point.² The Tax Court early concluded that it should decide all cases as it thought right.

This was not too difficult if appeal in the later case would not lie to the reversing Circuit. Missouri Pacific Railroad Co., 22 B.T.A. 267, 287, which followed Western Maryland Railway Co., 12 B.T.A. 889, after that case had been reversed, 33 F. 2d 695 (C.A.-4). The difficulty increased when the Tax Court adhered to its own opinion when appeal would lie to the reversing Circuit. Southern Railway Company, 27 B.T.A. 673, 688, *affd.* on the bond discount issue 74 F. 2d 887 (C.A.-4); Estate of Edward P. Hughes, 7 T.C. 1348, 1350; Harold Holt, 23 T.C. 469, 473. The pressure increased in situations where more than one Court of Appeals differed with the Tax Court, but was relieved if one or more agreed with the Tax Court. Robert L. Smith, 6 T.C. 255, 257. Cf. Putnam v. Commissioner, U. S. . . . (12-3-56). The Court of Appeals for the Eighth Circuit in that case affirmed a Memorandum Opinion of the Tax Court, 224 F. 2d 947. The Supreme Court affirmed, after granting certiorari, because of alleged conflict with Pollak v. Commissioner (C.A.-3) 209 F. 2d 57, reversing 20 T.C. 376; Edwards v. Allen (C.A.-5), 216 F. 2d 794; Cudlip v. Commissioner (C.A.-6)

²The United States Customs Court and the Court of Claims are other national courts operating on the trial court level, but they do not have similar problems since the appeals in each case go to an appellate court which also has a nationwide jurisdiction.

220 F. 2d 565, reversing a Tax Court Memorandum Opinion. See also *Basalt Rock Co., Inc.*, 10 T.C. 600, reversed (C.A.-9), 180 F. 2d 281, cert. denied 339 U. S. 966 and *Salko Brothers Furniture Co. v. Commissioner*, 185 F. 2d 222 (C.A.-5) affirming a Tax Court Memorandum Opinion which had followed 10 T.C. 600, cert. denied, 340 U. S. 952. Several Courts of Appeals have affirmed the Tax Court on the point decided in the present case.

The Tax Court and its individual Judges have always had respect for the 11 Courts of Appeals, have had no desire to ignore or lightly regard any decisions of those Courts and have carefully considered all suggestions of those Courts. The Tax Court not infrequently has been persuaded by the reasoning of opinions of those Courts to change its views on various questions being litigated. Cf. *Estate of William E. Edmonds*, 16 T.C. 110; *Albert L. Rowan*, 22 T.C. 865; *James M. McDonald*, 23 T.C. 1091; *Mills, Incorporated*, 27 T.C. . . (1-8-57).

This change of position sometimes backfires. The Tax Court, in *Wm. J. Lemp Brewing Company*, 18 T.C. 586, abandoned its decision on an issue in the face of reversals and disagreements on the part of Courts of Appeals for the Second and Eighth Circuits and the District of Columbia. It followed its new position on that point in *De Soto Securities Company*, 25 T.C. 175, but was reversed by the Court of Appeals for the Seventh Circuit, 235 F. 2d 409. Again, the Tax Court, five Judges dissenting, in *Burrus Mills, Inc.*, 22 T.C. 881, after being

reversed on the point involved therein by the Courts of Appeals for the Second, Seventh, Third and Sixth Circuits, concluded that it would have to follow those Courts, but later, in a case coming from the Court of Claims, the Supreme Court of the United States decided the point as the Tax Court had originally decided it. *United States v. Anderson, Clayton & Co.*, 350 U.S. 55. The Tax Court is not indifferent to the fact that a Court of Appeals has taken exception to its failure to follow a decision of that Court. Cf. *Stacey Mfg. Co. v. Commissioner*, 237 F. 2d 605. It repeatedly indicates in its opinions that it takes such action reluctantly and only because, after thorough re-examination, it cannot agree with the particular holding involved.

The Tax Court has always believed that Congress intended it to decide all cases uniformly, regardless of where, in its nationwide jurisdiction, they may arise, and that it could not perform its assigned functions properly were it to decide one case one way and another differently merely because appeals in such cases might go to different Courts of Appeals. Congress, in the case of the Tax Court, "inverted the triangle" so that from a single national jurisdiction, the Tax Court, appeals would spread out among 11 Courts of Appeals, each for a different circuit or portion of the United States. Congress faced the problem in the beginning as to whether the Tax Court jurisdiction and approach was to be local or nationwide and made it nationwide. Congress expected the Tax Court to set pre-

edents for the uniform application of the tax laws, insofar as it would be able to do that. Hearings before Ways and Means Committee, Revenue Act 1926, pp. 10, 869, 878, 911, 926, 932; H. Rept. No. 1, 69th Cong. 1st Sess., pp. 17-19; Congressional Record, Vol. 67, pp. 1136-7, 3749.

The Tax Court feels that it is adequately supported in this belief not only by the creating legislation and legislative history but by other circumstances as well. The Tax Court never knows, when it decides a case, where any subsequent appeal from that decision may go, or whether there will be an appeal. It usually, but not always, knows where the return of a taxpayer was filed and, therefore, the circuit to which an appeal could go, but the law permits the parties in all cases to appeal by mutual agreement to any Court of Appeals. Section 7482 (b)(2), I.R.C. 1954. Furthermore, it frequently happens that a decision of the Tax Court is appealable to two or even more Courts of Appeals. A few examples will illustrate. A corporation, having stockholders scattered over the United States, makes a distribution to all. The Commissioner holds it taxable as a dividend from accumulated earnings. The stockholders join in a trial before the Tax Court which decides the issue as to all petitioning stockholders, contrary to a decision of Court of Appeals A, which reversed a prior Tax Court decision, but perhaps in line with an affirming decision of Court of Appeals B. Cf. Edwin L. Wiegand, 14 T.C. 136, reversed (C.A.-7), 189 F. 2d 167, *affd.* (C.A.-3) (6-26-53, unreported), later reversed (C.A.-3), 194

F. 2d 479. If it had rendered a separate different decision for those stockholders in Circuit A, what amount of accumulated earnings would remain for future distributions? Another situation was presented by the Richmond Hosiery Mills. That corporation filed its corporate returns for three years with the collector of internal revenue for the district of Georgia and for one intermediate year with the collector of internal revenue for the district of Tennessee. It received one notice of deficiency and filed a single petition in the Tax Court each covering all four years. The Tax Court decided the case for all four years in a Memorandum Opinion and entered but one decision in the proceeding. The taxpayer took appeals to the Circuit Courts of Appeals for both the Fifth Circuit and the Sixth Circuit, in the former as to three of the years and in the latter as to a single year. The Sixth Circuit, in *Richmond Hosiery Mills v. Commissioner*, 237 F. 2d 605, a companion case with *Stacey Mfg. Co.*, *supra*, followed its own prior decision in *Owensboro Wagon Company v. Commissioner*, 209 F. 2d 617, reversing 18 T.C. 1107, while the Fifth Circuit, which had not previously passed on this question, in *Richmond Hosiery Mills v. Commissioner*, 233 F. 2d 908, adopted the view of the Sixth Circuit as expressed in the *Owensboro* case. Or suppose partners live in different circuits. Are the decisions of the Tax Court as to them to vary accordingly? See *Choate v. Commissioner*, 324 U.S. 1, in which the appeal in the case of *Hogan* was taken to the Fifth Circuit which affirmed the Tax Court, *Hogan v.*

Commissioner, 141 F. 2d 92, and the appeal in the case of Choate was to the Tenth Circuit which reversed the Tax Court, *Choate v. Commissioner*, 141 F. 2d 641, which was then reversed by the Supreme Court, thus affirming the Tax Court. Many more similar examples could be given. There is also the sometimes difficult problem of knowing from prior decisions of the appellate court precisely what its attitude is in relation to the current question before the Tax Court, Cf. *Estate of Catherine Cox Blackburn*, 11 T.C. 623, modified 180 F. 2d 952, particularly where it has more than one decision outstanding and each may seem to have a bearing but they are not too easily reconciled. The *Slaff* case already discussed is another example.

The Commissioner of Internal Revenue, who has the duty of administering the taxing statutes of the United States throughout the nation, is required to apply these statutes uniformly, as he construes them. The Tax Court, being a tribunal with national jurisdiction over litigation involving the interpretation of Federal taxing statutes which may come to it from all parts of the country, has a similar obligation to apply with uniformity its interpretation of those statutes. That is the way it has always seen its statutory duty and, with all due respect to the Courts of Appeals, it cannot conscientiously change unless Congress or the Supreme Court so directs.

The taxpayers also argue that the Commissioner had only four years instead of five years within

which to send out the notice of deficiency on which he could then assess and collect the tax. Section 275(e) on which they rely provides for a four-year period of limitations "If the taxpayer omits from gross income an amount properly includible therein under Section 115(c) as an amount distributed in liquidation of a corporation, * * *." Congress thereby gave an extra year to the Commissioner over the general three-year period if the omission was of the kind described therein, but Congress gave the Commissioner two extra years if the omission was of the kind described in Section 275(c). The two subsections overlap to some extent but since the omission here is of the kind described in Section 275(c), it is immaterial whether or not it might also qualify for the lesser period allowed by Section 275(e). There is nothing in the statute or its legislative history to indicate that if a particular omission was of the kind which came within both of these sections the Commissioner would be limited to the shorter period. See *Estate of Arthur T. Marix*, 15 T.C. 819, 825. The statute of limitations is not a bar to the assessment and collection of the deficiency in the present proceeding.

Reviewed by the Court.

Decision will be entered for the respondent.

Served January 28, 1957.

Entered January 28, 1957.

The Tax Court of the United States
Washington

Docket No. 53,929

ARTHUR L. LAWRENCE and ALMA P. LAW-
RENCE,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, filed January 25, 1957, it is

Ordered and Decided: That there is a deficiency in income tax of \$2,931.14 for the year 1948.

[Seal] /s/ J. MURDOCK,
Judge.

Served January 31, 1957.

Entered January 31, 1957.

The United States Court of Appeals
for the Ninth Circuit

Docket No. 15,532

ARTHUR L. LAWRENCE and ALMA P. LAW-
RENCE,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR REVIEW

Come now the petitioners, by and through their attorney, Brockman Adams of Little, LeSourd, Palmer, Scott & Slemmons, 15th Floor, Hoge Building, Seattle, Washington, and petition the Court for review of the decision of the Tax Court of the United States entered on January 31, 1957, in the case in that court entitled "Arthur L. Lawrence and Alma P. Lawrence, Petitioners, vs. Commissioner of Internal Revenue," Docket No. 53,929, and states in support of this petition:

A. The controversy, review of which is hereby sought, is as to whether petitioner is subject to all or any part of a proposed deficiency in federal income taxes for the calendar year 1948 in the amount of \$2,931.14, together with accrued interest.

B. Petitioners hereby seek review by the United States Court of Appeals for the Ninth Circuit of the decision of the Tax Court of the United States

on January 31, 1957, determining that there was a deficiency for the year 1948 in the amount above stated.

C. The income tax return of petitioners for the year of which review is hereby sought was filed in the Collector's office in Los Angeles, California. The place where petitioners reside, and the place where the office of said Collector (now Director) of Internal Revenue at Los Angeles is located, is within the Circuit of the United States Court of Appeals for the Ninth Circuit, and said Court is the court having jurisdiction of a review of the decision of the Tax Court herein under the provisions of 26 U.S.C. Sec. 7482, Subdivision (b)(1). That venue is thereby established in the United States Court of Appeals for the Ninth Circuit.

D. That the decision of the Tax Court was entered herein January 31, 1957, and the time for filing a petition for review has not as yet expired.

Wherefore your petitioners pray that the review be had of the decision of the Tax Court rendered in the above-entitled matter, and that upon such review said decision be reversed.

Dated this 11th day of March, 1957.

Respectfully submitted,

/s/ BROCKMAN ADAMS,
For Petitioners.

Received and filed March 20, 1957, T.C.U.S.

[Title of Tax Court and Cause.]

NOTICE OF APPEAL

To the Commissioner of Internal Revenue, and to Nelson P. Rose, Chief Counsel of the Internal Revenue Service; Melvin L. Sears, Regional Counsel; and John O. Durkin, Special Attorney, Bureau of Internal Revenue, His Attorneys:

You and Each of You Are Hereby Notified that Arthur L. Lawrence and Alma P. Lawrence are herewith filing their petition for review of a decision of the Tax Court of the United States entered in the above cause on January 31, 1957, and by the filing of said petition do appeal from said decision to the United States Court of Appeals for the Ninth Circuit.

Dated this 11th day of March, 1957.

/s/ BROCKMAN ADAMS,
Attorney for Petitioner.

Service of copy acknowledged.

Received and filed March 22, 1957, T.C.U.S.

[Title of Tax Court and Cause.]

STATEMENT OF POINTS

Come now petitioners and set forth the following statement of points upon which they will rely on the appeal from the decision of the Tax Court of

the United States entered in this cause on January 31, 1957.

1. The Tax Court erred in that its findings of fact do not support the decision of the Court.

2. The Tax Court erred in deciding that on its Findings of Fact the proposed federal income tax deficiency against the petitioners for the year 1948 was not barred by the statute of limitations set forth in Internal Revenue Code, Section 275(a).

3. The Tax Court erred in deciding that on its Findings of Fact the proposed federal income tax deficiency against petitioners for the year 1948 was not barred by the statute of limitations set forth in Internal Revenue Code, Section 275(e).

4. The Tax Court erred in deciding that on its Findings of Fact the proposed federal income tax deficiency against petitioners for the year 1948 was not barred by the statute of limitations for the reason that the period of limitation was not extended by Internal Revenue Code, Section 275(c).

5. The Tax Court erred in failing to follow the previous decisions of the United States Court of Appeals for the Ninth Circuit where the Ninth Circuit held that the extension of the period of limitations by Section 275(c) does not apply where taxpayer makes a full disclosure of income on his return.

6. The Tax Court erred in failing to enter a decision that there was no deficiency in federal income taxes due from petitioners for the year 1948.

Dated this 11th day of March, 1957.

/s/ BROCKMAN ADAMS,
Attorney for Petitioners.

Service of copy acknowledged.

Received and filed March 20, 1957, T.C.U.S.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 12, inclusive, constitute and are all of the original papers on file in my office as called for by the "Designation of Contents of Record on Review," in the case before the Tax Court of the United States docketed at the above number and in which the taxpayers in the Tax Court have filed a petition for review as above numbered and entitled, together with a true copy of the docket entries in said Tax Court case, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 9th day of April, 1957.

[Seal] /s/ HOWARD P. LOCKE,
Clerk, Tax Court of the
United States.

[Endorsed]: No. 15,532. United States Court of Appeals for the Ninth Circuit. Arthur L. Lawrence and Alma P. Lawrence, Petitioners, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of the Tax Court of the United States.

Filed April 22, 1957.

Docketed April 29, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

